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July 19, 2013

Environmental Protection Agency  
Attn: Engr. Hector D. Ortiz  
Environmental Engineering  
Caribbean Environmental Protection Division  
US Environmental Protection Agency  
City View Plaza II- Suite 7000  
#48, PR 165, Km 1.2  
Guaynabo, P.R. 00968-8059

Re: Enforcement Order CEPD-CWA-02-IR-2013-007  
Valley View Park and Valley View Development  
Sanitary Waste Water, Trak Num. PRU002779

Gentlemen:

The undersigned attorney represents Bayamón Acquisition Properties (BAP) and their principal in the matter of reference. The genesis of the infrequent spills of sewage water is the result of incomplete construction of the infrastructure facilities. We have already tendered to EPA copy of the complaint, answer to the complaint, counter claim and Stipulated order for judicial administration of the project, premises and the facilities.

At present there exists a Court Order by which the **project Owner, BAP and its management is not and may not be in possession nor may administer the project**, the waste water, the treatment plant or tank or any portion thereof. The Order was stipulated in open court in January 2013, but differences in the drafting delayed entering the final agreement in open court until April 16, 2013, then drafting took an additional month and the final document was signed on May 21, 2013, while the Court Order was signed on June 27, 2013 and the Order notified early July 2013. **Possession of the project is exclusively in the hands of Doral Bank and the judicial administrator appointed at the request of Doral Bank and its agent Black Point.** See the attached Court Order dated June 27, 2013 and the stipulation it adopts, we quote.

Doral and BAP agree that the powers and responsibilities of the Administrator include what is herein enumerated:

--Administer the development and construction of the project which **includes the exclusive possession**, he can sell houses when construction of each house is completed.

\* \* \*

— Within the works of the project a treatment plant, electric works and others are found. **The administrator will provide some priority to the treatment plant.**

EPA has issued letters requesting information, to which BAP has promptly responded and provided ample information and over a three hundred copies, bound, indexed and well organized. We included data of the project and of the controversy that brought construction to a stand still. Understandably, EPA has initially concentrated on the project Owner who traditionally owns, possess, controls and administers the land and project where the waste water spill has occurred. Possession and power to control carries the responsibility for the wrongful action and illegal discharge. The case of reference does not present a usual traditional scenario where the owner is in possession and control. The person in control is Miguel Diaz who responds to Doral Bank and Black Point, which entities control ALL the funding to the project and thereby. What and when can things be done, at their sole discretion. Therefore, the responsible parties are precisely those Mr. Diaz, Doral Bank and Black Point. Mr. Fernando Fernandez is not a potentially responsible party, neither is BAP.

If EPA issues an order to BAP that commands an action contrary to the Court Order, and *injunction* for judicial administration though Mr. Diaz and Doral Bank, BAP would confront two contradictory Orders. The Order that first was entered is the judicial Order by stipulation on April 16, 2013. Respectfully, that Order takes precedence. BAP may not be required to do exactly what it is prohibited from doing, possessing and administering the real estate and the project.

BAP directed its efforts to avoid having an incomplete waste water treatment plant. Doral Bank, without prior notice, discontinued all disbursements under the loan agreement for the work performed in June 2012. BAP continued working the construction and concentrated its efforts in the waste water treatment plant, but Doral Bank brought all construction to a stand still. The drained resources forced limited trucking of the waste water, which is the reason for which possession was tendered to Doral Bank with the agreement that priority would be given to construction of the Treatment Plant. The designed and half constructed treatment plant is a zero discharge plant where the final water is disposed of through evaporation and irrigation in a leaching field. Therefore, the functioning plant is not to have any contact with navigable waters.

At present we have tendered to Engr. Miguel Diaz all plant, permits, soil data, contracts invoices, etc. that he may need to attain prompt performance of his obligations to the Court, to EPA, to the residents, to Doral and to BAP.

It is common knowledge that Doral Bank has confronted substantial serious cash constraints and insolvency. During the life of the loan agreement between BAP and Doral in several occasions Doral discontinued making disbursements under the loan, which severely impacted construction, costs and time.

WE kindly request from EPA to consider the crucial set of events and fact herein contained when examining who in reality has possession, control, administration and the resources devoted to



attain compliance with the EPA standards by having bound itself to construct the treatment plant with priority, which is Doral Bank, Black Point and Engr. Miguel Diaz..

We remain available to cooperate with EPA on anything that we may be of assistance.

Cordially,



Edilberto Berríos Pérez

Bayamón Acquisition Properties,



By Mr. Fernando Fernandez Aguiló

Attachments,  
Court Order and stipulation on hearing of April 16, 2013